

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
South Bay Cities Council of Governments, <i>et al.</i>)	DA 05-3158
Petition for Emergency Relief of the California)	
Public Utilities Commission's Decision to)	
Implement an All Services Area Code Overlay)	
In the 310 Area Code		

**REPLY COMMENTS OF
THE TELEPHONE CONNECTION OF LOS ANGELES, INC. AND
THE TELEPHONE CONNECTION LOCAL SERVICES, LLC**

The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services, LLC (collectively, "TCLA"), through its undersigned counsel, hereby submits its reply comments in the above-referenced docket. On November 23, 2005, TCLA and the South Bay Cities Council of Governments ("SBCCOG") (SBCCOG with TCLA, hereinafter referred to as "Petitioners") requested that the Wireline Competition Bureau (the "Bureau") immediately issue an order directing the California Public Utilities Commission (the "CPUC") to stay implementation of its *Overlay Decision*¹ regarding an all-services area code overlay in the 310 NPA, while the FCC reviewed the CPUC's compliance with federal numbering rules and guidelines (the "Petition"). The Petitioners also requested that the FCC issue a declaratory ruling that the CPUC's *Overlay Decision* was not in compliance with the FCC's rules and decisions regarding implementation of area code overlay dialing patterns, and direct the CPUC to:

- (a) Implement 10-digit overlay dialing in the geographic area currently served by the 310 NPA, with permissive 1+10 dialing; and

¹ CPUC Decision 05-08-040, released August 25, 2005 ("*Overlay Decision*").

- (b) Apply the 10-digit dialing mandate amongst all affected carriers and customers in the current 310 NPA, regardless of the technology used.

In response, the Bureau sought public comment on the Petition.² Predictably, the CPUC, several wireless carriers, an incumbent carrier, and a cable telecommunications association (collectively referred to herein as the “Opponents”) filed comments in opposition to the Petition.³ Their oppositions were predominantly based on the supposition that there is a critical shortage of numbers in the 310 NPA, and if the FCC were to grant the Petition, it would delay implementation of the area code overlay designed to address the alleged number shortage. As demonstrated below, however, on December 22, 2005, the County of Los Angeles submitted new evidence to the CPUC that argues to the contrary that there may not be an immediate need for implementation of an area code overlay in the 310 NPA, and that the *Overlay Decision* was based on outdated information that did not take into account recent changes in the telecommunications industry. This new evidence is discussed below, and a copy of the Los Angeles County Petition is attached hereto for the FCC’s review. Because there may not be an immediate need for implementation of the *Overlay Decision*, the public interest would not be harmed by the FCC issuing a stay while it reviews the legality of the CPUC’s *Overlay Decision*.

In addition, the Opponents fail to refute the Petitioners’ demonstration that the CPUC, in its zeal to placate the incumbent local exchange carriers (“ILECs”) and wireless carriers, has

² *Wireline Competition Bureau Seeks Comment on South Bay Cities council of Governments, et al., Petition for Emergency Relief of the California Public Utilities commission’s Decision to Implement an All-Services Area Code overlay in the 310 Area Code*, DA 05-3158 (rel. Dec. 8, 2005).

³ See Comments filed by the California Public Utilities Commission (“CPUC Comments”), the California Cable & Telecommunications Association (“CCTA Comments”), Verizon Wireless (“VZ Wireless Comments”), Verizon California Inc. (“VZ Comments”), and joint comments by T-Mobile USA, Inc, Cingular Wireless, LLC, and AT&T Inc. (“Wireless Coalition Comments”).

ignored the FCC's guidelines for implementing area code overlays, resulting in a dialing disparity that harms the public interest. Finally, the Opponents have failed to overcome Petitioners' clear demonstration that irreparable harm will occur if the FCC does not take immediate action to stay the *Overlay Decision*.

I. Issuance of a Stay Will Not Harm Other Interested Parties

The Petition demonstrated that the grant of a stay would merely maintain the *status quo*, and not harm any other interested parties. In response, Opponents have claimed that a stay will result in a critical number shortage in the 310 NPA. This alleged harm is merely a smokescreen being thrown out to disguise the fact that the CPUC violated the FCC's rules, and the Opponents are merely trying to get the FCC to overlook this fact due to the "exigencies" of getting additional numbers in the 310 NPA. As demonstrated below, however, there is new evidence that the cry for more numbers may really be more of a "cry of wolf." This is due in part to the fact that the CPUC's decision for an overlay was based on outdated information that did not take into account recent changes in the telecommunications industry.

In a recent petition filed with the CPUC by the Los Angeles County ("*LAC Petition*"),⁴ new evidence was submitted which demonstrates that the *Overlay Decision* was based on outdated and inaccurate data, and that recent events indicate that there may be sufficient numbers available within the 310 area code without the need of an overlay. The *LAC Petition* is supported by a detailed study prepared by Dr. Lee L. Selwyn, President of Economics and Technology, Inc., a research and consulting firm specializing in telecommunications economics, regulation and public policy.

⁴ *Petition of Los Angeles County for Modification of Decision 05-08-040 (The 310/424 Area Code Overlay)*, Rulemaking 95-04-043, filed December 22, 2005, attached hereto as Exhibit A.

First, the *LAC Petition* shows that the *Overlay Decision* was based on old and inaccurate estimates of number supply and availability from the mid-1990s through about 2000.⁵ In calculating the future demand for numbers, the CPUC relied on a simple extrapolation of past number demand and supply trends using data from over five years ago. Due to a variety of changes in the industry, however, such data cannot accurately predict new trends. In fact new evidence shows an overall decrease in the demand for numbers in the 310 NPA due to factors such as the large consolidations among the CLEC, wireless and wireline industries, as well as customer migrations from second residential access lines to broadband Internet access services.⁶ Therefore, the CPUC should have relied on current data on number demand and supply within the 310 NPA.

Second, the *LAC Petition* points out that the CPUC improperly focused upon the availability of numbers and number blocks for assignment to carriers, rather than upon the existing inventory of numbers already assigned to carriers but not yet assigned by those carriers to customers.⁷ In fact, based upon current FCC data, the *LAC Petition* states that there are between 3 - 4,000,000 numbers in carrier inventories potentially available for assignment to customers in the 310 NPA.⁸ This is telling given the fact that the CPUC observed on March 16, 2000, that there were approximately three million unused numbers as of November 1999.⁹ In other words, the amount of unused numbers has not diminished, but has grown over five years. And as pointed out above, this number will most likely grow significantly due to changes in the

⁵ *Id.* at 8.

⁶ *Id.* at 9-10.

⁷ *Id.* at 11-12.

⁸ *Id.*

⁹ *Id.*

industry such as the two recent wireless mergers of Cingular/AT&T Wireless and Sprint/Nextel, and the wireline mergers of AT&T/SBC and Verizon/MCI.

Third, SBC and Verizon, which have over 2,000,000 numbers available for assignment, partially block the use of these numbers because of their reliance on an archaic “rate center” structure that divides the 310 NPA into 16 separate rate centers so they can make local/toll pricing distinctions and distance-based rate structures/pricing schemes that are no longer used by most other industry participants, including their own wireless affiliates.¹⁰ The *LAC Petition* argues that they should be required to either abandon the use of rate centers, making millions of additional numbers available for assignment, or make numbering resources currently in their inventories available to other service providers.¹¹

Finally, the *LAC Petition* points out that if the FCC adopts a new system for assessing USF contributions based on a numbers approach (as advocated by FCC Chairman Martin), there will be a huge incentive for customers with large quantities of unused Direct Inward Dial (DID) numbers to return most of them to the ILEC or CLEC rather than pay number-based USF charges.¹²

Accordingly, the FCC should reject the Opponents arguments that a stay would harm their ability to access numbers. The *LAC Petition* argues against their claims that there is a critical shortage of numbers. Therefore, a stay of the *Overlay Decision* will not harm any carrier’s ability to get numbers while the CPUC rewrites its decision to conform with FCC guidelines.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 13.

¹² *Id.* at 12.

II. Petitioners Have Demonstrated “Irreparable Injury”

The Petition demonstrates that the public stands to suffer irreparable injury if a stay is not issued due to the waste of funds that must be expended on a faulty public education plan (PEP), and the resulting customer confusion when that PEP is eventually changed. In addition, the mere allowance of a state PUC to disregard FCC rules is an irreparable injury in and of itself. In response, Opponents have argued that no one will suffer by the 310/424 overlay PEP and implementation schedule going forward while the FCC reviews the merits of the Petition.¹³ They argue that the PEP has already commenced, and will still be necessary even if the exact details of the overlay plan are eventually changed, and if the FCC were to stop the PEP now it would result in even more confusion.¹⁴ In addition, some opponents argue that the small CLECs such as TCLA are only required to contribute a very small amount of money to the overall PEP campaign because the budget is spread among all carriers based on how many telephone numbers they have.¹⁵ As demonstrated above, however, there is a real dispute as to whether the overlay plan is even needed since there may not be a critical shortage of numbers. Therefore, any expenditure of funds on the PEP right now is a waste of funds causing irreparable injury to those required to contribute. In addition, the longer the PEP goes forward in its present form, the greater the customer confusion will be as the plan is eventually changed to conform with FCC guidelines.

The CPUC argues that because most of the spending on the education plan will occur in the spring and summer of 2006, the FCC has ample time to rule without needing a stay of the

¹³ CCTA Comments at 6, VZ Wireless Comments at 6, VZ Comments at 3.

¹⁴ *Id.*

¹⁵ CPUC Comments at 8, VZ Wireless Comments at 6.

process.¹⁶ In response, TCLA notes that PEP funds have indeed already been spent, but unless the FCC acts as soon as possible, additional funds will need to be spent, and the customer confusion will continue to grow.

CCTA states that the visually disabled are already harmed in California due to inconsistent wireless dialing protocols, so the different dialing patterns resulting from the *Overlay Decision* will not exacerbate the problem.¹⁷ This argument ignores the fact that within the 310 NPA (and for that matter any other NPA in California), parties making a local call within their NPA do not need to dial more than seven (7) digits. Therefore, currently the visually disabled are not disadvantaged when making local calls within their NPA. The *Overlay Decision*, however, will result in a change to dialing patterns within the 310 NPA, and visually disabled consumers living in that NPA will be harmed.

III. The Overlay Decision Creates A Dialing Disparity Between Wireline And Wireless Carriers

The Petition clearly shows that implementation of the 310/424 area code overlay as required in the *Overlay Decision* will result in an unacceptable dialing disparity between wireline and wireless carriers. The Opponents argue that the *Overlay Decision* merely keeps the *status quo* between wireline and wireless carriers. They state that carriers that require the “1+” prompt for inter-NPA calls will continue to require the “1+” for making those calls.¹⁸ This argument ignores the fact again that currently in the 310 NPA, consumers making intra-NPA calls all dial the same way, whether from a wireless or a wireline phone. After implementation of the *Overlay Decision*, the 310 NPA will be the only NPA in the state of California where consumers wishing

¹⁶ CPUC Comments at 9.

¹⁷ CCTA Comments at 7.

¹⁸ CPUC Comments at 18, Wireless Coalition Comments at 7.

to make a local intra-NPA call will have to dial 1+10 digits from a wireline phone, and 10 digits from a wireless phone.

The CPUC argues that publicity for the overlay will instruct customers only to dial “1+”, whether from a wireline or wireless phone.¹⁹ This is wrong. The only PEP letter approved by the CPUC to date, which has already been sent out, has two different dialing plans listed. A copy was attached to the Petition, and is attached again hereto as Exhibit B. The CPUC has not taken any action since approving this first letter to educate the public differently.

The CPUC also argues that it is counterintuitive to assume customers that are content with their service provider will suddenly drop a wireline carrier and switch to a wireless provider simply because the wireless network can accommodate 10-digit dialing.²⁰ The CPUC again ignores the reality of a competitive marketplace where companies will use whatever competitive advantage they have to sell their product. There is no doubt that in marketing their wireless services, and encouraging consumers to drop their landline services, wireless carriers will point out all of the advantages their product offers, which under the *Overlay Decision*, would include “simpler” dialing patterns.

IV. Petitioners Have Established They Will Succeed On The Merits

The FCC has laid out clear guidelines for the implementation of area code overlays. The Petition shows that the *Overlay Decision* does not comply with these guidelines. In particular, the FCC has already considered and rejected a proposal to adopt a 1+10 digit dialing pattern for local numbers, and has said that there should not be any dialing disparities resulting from an overlay. In opposition, the Opponents attempt to find rationale and words in the decisions of the

¹⁹ CPUC Comments at 18.

²⁰ *Id.*

FCC that just are not there. For instance, only one opponent even attempts to refute the fact that in the FCC's *Third Reconsideration* decision²¹ the FCC clearly rejected 1+10 digit dialing for implementing overlays. The CCTA argues that the FCC somehow made an implicit exception for California because the rationale it used for rejecting 1+10 digit dialing was to avoid confusion regarding the dialing of toll versus local calls, and that is not an issue in California because Californians already associate dialing a "1" as coinciding with dialing another area code, and not with making a toll call.²² The fact is, the FCC has stated that 1+10 digit dialing should not be used for area code overlays.²³ The CCTA's argument ignores the fact that in the 310 NPA, Californians will be doing something different than they are required to do in any other NPA in the state, that is, to dial a "1" before making a local call within their own NPA.

In addition, the FCC has been clear that it prefers that the "1" be used to indicate toll calls. Being a state that traditionally has been very consumer conscious, there is no doubt that if Californians realized that there is a way to tell if a call is going to cost, or be toll free simply by whether a "1" is needed to be dialed first, Californians would select the consumer friendly way that the vast majority of the rest of the country enjoys. The arguments cited by CCTA, and made by the ILECs that the current system of dialing "1" is needed to avoid post-dialing delays, are

²¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19512 at ¶ 272 (1996) ("*Second Report and Order*"), *vacated in part sub nom. People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *rev'd, AT&T Corp. V. Iowa Util. Bd.*, 119 S.Ct. 721 (1999), *reconsideration granted in part and denied in part*, 14 FCC Rcd 17964 (1999) ("*Third Reconsideration*").

²² CCTA Comments at 8.

²³ VZ Wireless states that when the FCC declined to mandate 1+10 digit dialing in overlays, it also did not declare such dialing to be illegal. VZ Wireless Comments at 8. This is backwards logic, and merely an attempt to twist the words of the FCC into something it did not say. When the FCC rejected 1+10 digit dialing, there was no reason for it to also state that to do otherwise would be illegal. This should have been clearly understood.

merely attempts by the ILECs to avoid making the necessary switch changes to bring their switching systems into the 21st century. The CPUC is well overdue in looking at this issue for the whole state. In the meantime, it should not be allowed to exacerbate the problem here by requiring something totally counterintuitive such as dialing a “1” before for an intra-NPA call.

Some opponents also argue that other states have adopted 1+10 digit dialing such as Illinois and New York, and their actions have not been overturned by the FCC.²⁴ In fact, one opponent argues that the FCC dialing disparity cases all focus on seven (7) versus ten (10) digit dialing, and therefore, the FCC must only be concerned with disparities that result from seven (7) versus ten (10) digit dialing.²⁵ However, the concerns expressed by the FCC for not allowing dialing disparities equally apply to the current situation. Just because the FCC has not been confronted with this type of disparity before, does not mean that it should not address it now. Further, the fact that other states have not followed the guidance of the FCC does not make it right, it just means that their actions have not been challenged, so the FCC has not had an opportunity to rule on them.

One opponent argued that the CPUC took into account the FCC’s number parity rules, and in Decision 05-12-047, the CPUC solicited an additional round of comments as to whether changes in the state dialing pattern should be modified for any subsequent, proposed area code overlay in California.²⁶ While it is good that the CPUC is looking at the broader issue on a statewide level, that does not mean that the CPUC should be allowed to treat the 310 NPA differently than the rest of the state. If the CPUC wants to address this issue on a bigger,

²⁴ VZ Wireless Comments at 8, CPUC Comments at 14.

²⁵ VZ Wireless Comments at 10.

²⁶ CCTA Comments at 9.

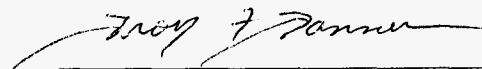
statewide level, then it should stay its action in the 310 NPA overlay until it has resolved the bigger issues.

V. Conclusion

For the reasons discussed herein, the Wireline Competition Bureau should deny the oppositions filed in this proceeding, and grant the Petition for Emergency Relief and immediately issue an order to stay implementation of the CPUC's *Overlay Decision* while the FCC reviews the CPUC's compliance with federal numbering rules and guidelines. In addition, whether or not the FCC grants a stay, the FCC should still issue a declaratory ruling that the CPUC's *Overlay Decision* is not in compliance with the FCC's rules and decisions regarding implementation of area code overlay dialing patterns, and direct the CPUC to:

- (a) Implement 10-digit overlay dialing in the geographic area currently served by the 310 NPA, with permissive 1+10 dialing; and
- (b) Apply the 10-digit dialing mandate amongst all affected carriers and customers in the current 310 NPA, regardless of the technology used.

Respectfully submitted,



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